

FILED
08 SEP 29 AM 11:20
CLERK OF U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
RICHARD M. WILKINS

1 WILLIAM R. TAMAYO, REGIONAL ATTORNEY- #084965 (CA)
2 JONATHAN T. PECK, SUPERVISORY TRIAL ATTORNEY- #12303 (VA)
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4 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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E-Filing

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

AKEENA SOLAR, INC.,

Defendant.

Civil Action No.

0-08 4527

Civil Rights – Employment Discrimination

JURY TRIAL DEMAND

PVT

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Gladys Tellez, who was adversely affected by such practices. The Commission alleges that Akeena Solar, Inc., discriminated against Ms. Tellez, a qualified individual with a disability, when it unlawfully discharged her because of her disability.

JURISDICTION AND VENUE

1
2 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,
3 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the
4 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by
5 reference Section 706(f) (1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42
6 U.S.C. § 2000e-5(f)(1) and (3) and pursuant to Section 102 of the Civil Rights Act of 1991, 42
7 U.S.C. § 1981(a).

8
9 2. The employment practice alleged to be unlawful were and now are being
10 committed within the State of California, County of Santa Clara, which are within the
11 jurisdiction of this Court.

INTRADISTRICT ASSIGNMENT

13
14 3. This action is appropriate for assignment to the San Jose Division, Northern
15 District of California, because the alleged employment practice alleged were and are being
16 committed in Santa Clara County.

PARTIES

17
18
19 4. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is
20 the agency of the United States of America charged with the administration, interpretation and
21 enforcement of Title I of the ADA and is expressly authorized to bring this action by Section
22 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f) (1)
23 and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

24
25 5. At all relevant times, Defendant Akeena Solar, Inc. ("Defendant") has
26 continuously been doing business in the State of California, in the County of Santa Clara, and
27 has continuously had at least 15 employees.

1 6. At all relevant times, Defendant Akeena Solar, Inc. has continuously been an
2 employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42
3 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by
4 reference Section 701(g) and (h) of Title VII, 42 U.S.C. § 2000e (g) and (h).

5
6 7. At all relevant times, Defendant has been a covered entity under Section 101(2) of
7 the ADA, 42 U.S.C. § 12111(2).

8 STATEMENT OF CLAIMS

9 8. More than thirty days prior to the institution of this lawsuit, Gladys Tellez filed a
10 charge with the Commission alleging violations of Title I of the ADA by Defendant. All
11 conditions precedent to the institution of this lawsuit have been fulfilled.

12
13 9. Since at least November 14, 2006, Defendant has engaged in unlawful
14 employment practices, in violation of Section 102(a) of Title I of the ADA, 42 U.S.C. §12112(a).
15 The Defendant discriminated against Gladys Tellez, a qualified individual with a disability, when
16 it unlawfully discharged her because of her disability on her first day of employment, in violation
17 of the ADA.

18
19 10. The effect of the practices complained of in paragraph 9 above has been to
20 deprive Ms. Tellez of equal employment opportunities and otherwise adversely affect her status
21 as an employee because of her disability.

22
23 11. The unlawful employment practices complained of in paragraph 9 above were and
24 are intentional.

25 12. The unlawful employment practices complained of in paragraph 9 above were and
26 are done with malice and/or reckless indifference to the federally protected rights of Ms. Tellez.

27 ///

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, successors, assigns, and all persons in active concert or participation with it, from any employment practice which discriminates on the basis of disability.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Gladys Tellez by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including reinstatement.

D. Order Defendant to make whole Gladys Tellez by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 9 above, including past and future out-of-pocket losses, in amounts to be determined at trial.

E. Order Defendant to make whole Gladys Tellez by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 9 above, including pain and suffering, emotional distress, indignity, loss of enjoyment of life, loss of self-esteem, and humiliation, in amounts to be determined at trial.

F. Order Defendant to pay Gladys Tellez punitive damages for its malicious and reckless conduct, as described in paragraph 9 above in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

1 H. Award the Commission its costs of this action.

2 JURY TRIAL DEMAND

3 Pursuant to the provisions of Federal Rule of Civil Procedure 38(b), Plaintiff hereby
4 demands a jury trial.
5

6 RONALD S. COOPER
7 General Counsel

8 JAMES L. LEE
9 Deputy General Counsel


10 GWENDOLYN Y. REAMS
11 Associate General Counsel

12 EQUAL EMPLOYMENT OPPORTUNITY
13 COMMISSION
14 1801 L Street, N.W.
15 Washington, D.C. 20507

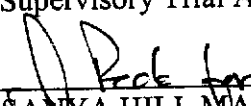
16 DATE: September 29, 2008

17 
18 WILLIAM R. TAMAYO
19 Regional Attorney

20 DATE: September 29, 2008

21 
22 JONATHAN T. PECK
23 Supervisory Trial Attorney

24 DATE: September 29, 2008

25 
26 SANYA HILL MAXION
27 Senior Trial Attorney

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CIVIL COVER SHEET

JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Equal Employment Opportunity Commission
350 The Embarcadero, Suite 500
San Francisco, CA 94105-1260
Sanya Hill Maxion, (415) 625-5650

DEFENDANTS

AKEENA SOLAR, INC., Agent for Service of Process: Nat'l Corp.
Research, Ltd., 523 W. 6th St., Suite 544, Los Angeles, CA 90014

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question
(U.S. Government Not a Party)
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	PERSONAL INJURY	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	PERSONAL INJURY	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			
	PRISONER PETITIONS			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General Habeas Corpus:			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991.

Brief description of cause:

To correct unlawful employment practices on the basis of disability and to provide appropriate relief.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

Sanya Hill Maxion

9/24/08